

The Honorable Joseph F. Bianco
United States Circuit Judge
United States Court of Appeals for the Second Circuit
1040 Federal Plaza
Central Islip, New York 11722

Dear Judge Bianco,

Your Honor, below is an excerpt from a sentencing memorandum submitted on behalf of a recently sentenced MDC detainee in front of Judge Rakoff. His Guidelines were 188-235 months. He was sentenced to 66 months, on a Title 21 case as a Career Offender. The relevancy is that this inmate spent 48 months at MDC pre-sentence and was Kenner's neighbor for a majority of that period of time -- including the last year under 24/7 Covid protocols.

Attorney Cistaro wrote 5/19/2021 to Judge Rakoff --

Since March 2020, he has been locked down in a small cell for 24 hours a day, 7 days a week. During the lockdowns [he] was only permitted to shower very few weeks, and he, like so many others, was denied any recreational time, exercise, or fresh air. His primary source of nutrition has been frozen bologna or frozen jelly sandwiches -- each served with a cookie, a pint of milk, and a container of juice -- the same meal -- 3 times a day. [He] like the vast majority of our clients, reports that he had to wait for the bread to thaw in order to eat his simple sandwich. He was also provided a single bottle of water per day, not withstanding that the brown water sprang from his sink was undrinkable. Still worse, he was provided his frozen meals through the cell door -- like an inmate awaiting execution on death row.

During the pandemic, [he] witnessed other inmates suffering tremendously from the Covid virus. He reports that, on several occasions, he witnessed several inmates fall to the ground on their way to the showers -- in agony. He watched them crying out desperately for help because they could not breathe. These inmates were severely ill and in pain. All of the inmates were terrified. [He] spent sleepless nights believing it was only a matter of time before he would be in their shoes...Do we dare to compare the treatment that [he] and other inmates received at the heartless and inept hands of our jails to caged animals -- or must we recognize that society demands that animals to be treated more humanely.

United States v. Ervin Ortiz, 18 cr 413 (SDNY), Docket No. 148.

The last 8-months since Kenner's 10-5-2020 sentencing, the COVID conditions deteriorated to the COVID reservoir environment recently described by the BOP, including Director Carvajal to Congress.

Thanks for your additional consideration in this s.3582 matter.

Respectfully Submitted,
Phillip Kenner